UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

PETER FUCHS and) CIVIL DIVISION
DIANE L. FUCHS, his wife,)
)
Plaintiffs,)
) No. 03-1953
vs.)
)
SHENANGO TOWNSHIP,)
CHIEF OF POLICE RON PRESTON,)
individually and in his official capacity, and)
OFFICER JASON NEWTON,)
•)
Defendants.)

PLAINTIFFS' PRE-TRIAL STATEMENT

I. FACTS

This is a civil rights case arising out of an incident which occurred on November 15, 2002 involving the excessive use of force and the use of mace. On that date, Peter Fuchs was present on his brother's property where there had been a trailer fire. As Fuchs was attempting to approach his brother to provide assistance, Defendant Newton stopped Fuchs and began to use vulgar language and push Fuchs. When Fuchs made a pointing gesture as he again attempted to explain who he was, Defendant Newton grabbed Fuchs' arm and stated that Fuchs "assaulted a police officer". Fuchs then began to flinch away from Defendant Newton. Defendant Newton thereafter sprayed mace in Fuchs' face for an extended time. At no time was Defendant Newton in danger; and Defendant Newton suffered no injury, except as caused by the force he applied to Fuchs. Under the circumstances of the case, the evidence will establish that this was an improper seizure of Fuchs involving excessive force.

As to Defendants Shenango Township and Preston, although they have a policy on the use of force, the policy does not address the use of mace. In addition, according to Officer Newton, the mace had been supplied by Chief Preston. The evidence will further establish that at the time of the subject incident, Officer Newton did not possess a certification for the use of mace. Accordingly, said Defendants showed reckless indifference to the rights of the public including Fuchs.

As the result of the incident, Fuchs suffered burning in his eyes, nose and face. The effects of the mace persisted over time and eventually required Mr. Fuchs to undergo sinus surgery. Mr. Fuchs continues to experience sinus problems as the result of the incident.

II. DAMAGES

1.	UPMC Horizon, ER	\$	173.00
2.	UPMC Emergency Medicine	\$	172.00
3.	Robert A. Cicuto, M.D.	\$	195.00
4.	John Wassil, M.D.	\$	407.10
5.	Daniel J. Callaghan, Jr.	to	be provided
6.	UPMC Horizon	\$	631.00
7.	Labcorp	\$	338.00
8.	Diagnostic Imaging Consultants	\$	206.00

III. WITNESSES

A. LIABILITY

Witnesses who are expected to be called

1. Plaintiff, Peter Fuchs

- 2. Plaintiff, Diane Fuchs
- 3. Jennifer DeStatio 246 Wansack Road, West Middlesex, PA
- 4. Lee Wallace Negley Street, Farrell, PA
- 5. Anthony Caputo Negley Street, Farrell, PA
- 6. Peter Fuchs (son of Plaintiffs)
- 7. Michael Fuchs 20 Hnida Road, Shenango Twp. PA
- 8. Michelle Fuchs 20 Hnida Road, Shenango Twp. PA
- 9. Joann Currigan Patton Drive, Farrell, PA
- 10. Peter Fuchs (father of Plaintiff) 3320 Silver Ridge Court Hermitage, Pa 16148
- 11. Jode Palumbo 5905 Statler Ave. Orlando, FL 32809
- 12. Rick Stanford 5905 Statler Ave. Orlando, FL 32809
- 13. Rodney Garrett 2646 Mercer-West Middlesex Road, West Middlesex, PA
- 14. Defendant Newton
- 15. Defendant Preston
- 16. Robert Fabrey, 135 SE Leika Lane Point St. Lucie, FL 34983
- 17. Bill Williams 54 Grange Road, New Wilmington, PA
- 18. George Seifert 2955 Mercer/W Middlesex Road, West Middlesex, PA
- 19. Gary Spohn 8235 Robert Street, Masury, PH
- 20. Ronald Ziglear 323 Sharon Bedford Road, West Middlesex, PA
- 21. Robert Luchich 69 Erie Street, West Middlesex, PA
- 22. Jeremiah Davis 133 S Stateline Road, Sharon, PA

Witnesses who may be called to testify

23. Officer McAdams, c/o Southwest Regional Police

- 24. Edward Lancaster 555 West Cornell Road, Mercer, PA
- 25. Robert Powell c/o Mercer County District Attorney's Office

B. Injury and Damages

Witnesses who are expected to be called

- 1. Plaintiff Peter Fuchs
- 2. Plaintiff Diane Fuchs
- 3. Peter Fuchs
- 4. Michael Fuchs 20 Hnida Road, Shenango Twp. PA
- 5. Joann Currigan Patton Drive, Farrell, PA
- 6. Peter Fuchs (father of Plaintiff) 3320 Silver Ridge Court Hermitage, PA
- 7. Daniel J.Callaghan, M.D. 3126 Wilmington Road, New Castle, PA Witnesses who may be called to testify
- 8 Robert A. Cicuto, M.D.
- 9. John Wassil, M.D.
- 10. James T. DeAngelis, D.O. c/o UPMC Horizon Emergency Department
- 10. Any person needed to authenticate any medical record or billIt is likely that medical witnesses listed herein will testify via deposition. Such

IV. EXHIBITS

Exhibits which are expected to be offered

depositions have not yet been taken.

- 1. Policy Manual for Shennago Township
- 2. Personnel file of Defendant Newton

- 3. Photographs of scene of incident
- 4. Diagram of Scene of Incident
- 5. Witness Statements
- 5. Cannister of Phase Four Spray (preferably subject spray now possessed by Defendants)
- 6. Officer Newton's Affidavit of Probable Cause, incident report and other police documents
- 7. Transcript of Preliminary Hearing

Exhibits which may be offered

- 8. Records of Medical Providers listed in this Pre-Trial Statement
- 9. Medical Bills listed as damages
- 10. Witness statements

V. EXPERT REPORTS

- 1. Any and all medical providers may testify as expert witnesses
- 2. Plaintiff reserves the right to file a report of a liability expert

VI. LEGAL ISSUES

Plaintiffs' counsel is not aware of any unique legal issues.

Respectfully Submitted,

EVANS, PORTNOY, QUINN & O' CONNOR

By: s/ Mark E. Milsop_

John E. Quinn, Esquire Pa. ID No. 23268 Mark E. Milsop Pa. ID No. 66069 Attorney for Plaintiffs 301 Grant Street 36th Floor, One Oxford Centre Pittsburgh, PA 15219 (412) 765-3800